

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MEDICIS PHARMACEUTICAL
CORPORATION,

Plaintiff,

v.

NYCOMED U.S., INC.,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: JUL 19 2012

Civil Action No.
11-CV-4962 (AJN)
ECF Case

JOINT DISMISSAL AGREEMENT AND [PROPOSED ORDER]

WHEREAS Plaintiff Medicis Pharmaceutical Corporation ("Medicis") brought this action asserting infringement of United States Patent No. 7,981,909 ("the Medicis Patent");

WHEREAS Defendant Nycomed U.S. Inc., now known as Fougera Pharmaceuticals Inc. ("Fougera"), owns the approved Abbreviated New Drug Application No. 90-146 ("the Fougera ANDA") which permits it to market and sell a generic ciclopirox 1% shampoo ("the Fougera Ciclopirox Product");

WHEREAS Medicis and Fougera are parties to litigation in this Court relating to the Medicis Patent and the Fougera Ciclopirox Product ("the Litigation");

WHEREAS Medicis and Fougera have entered into a License and Settlement Agreement pursuant to which they have resolved the Litigation;

WHEREAS the Court has made no factual or legal findings with regard to the Medicis Patent or the Fougera Ciclopirox Product;

WHEREAS final settlement of the Litigation serves the public interest by saving judicial resources and avoiding risks and uncertainties to Medicis and Fougera associated with litigation;

WHEREAS final settlement of the Litigation will permit Medicis and Fougera to save litigation costs, as well as adhere to the judicially recognized mandate that encourages the settlement of litigation whenever possible;

NOW, THEREFORE, Medicis and Fougera stipulate that:

1. Except as reserved and provided for in the License and Settlement Agreement, Fougera, on behalf of itself and its subsidiaries and affiliates, acknowledges and agrees that the claims of the Medicis Patent are valid and enforceable.

2. Except as reserved and provided for in the License and Settlement Agreement, Fougera, on behalf of itself and its subsidiaries and affiliates, acknowledges and agrees that the Fougera Ciclopirox Product that is the subject of the Fougera ANDA would, in the absence of the license granted by Medicis in the License and Settlement Agreement, infringe the Medicis Patent.

3. All claims and counterclaims in this action are dismissed with prejudice.

4. Each party shall bear its own costs, expenses, and attorneys' fees in connection with this action.

5. The parties waive any right of appeal from this Joint Dismissal Agreement and Order.

DATED: New York, New York
July 16, 2012

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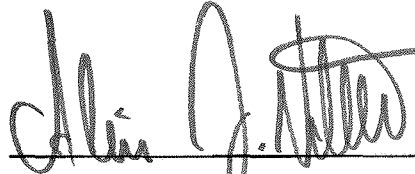
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*Attorneys for Defendant
Nycomed U.S. Inc.*

IT IS SO ORDERED

Dated: New York, New York
July 19, 2012



ALISON J. NATHAN
United States District Judge